

GENERAL ORDERS,	}	HEADQUARTERS OF THE ARMY,
No. 11.		ADJUTANT GENERAL'S OFFICE, Washington, February 5, 1862.

I..The following "General Orders," No. 39, from the Headquarters, Army of the Potomac, is published from this Office, that the action on the recommendation therein contained in the case of Captain *John R. Cutler*, 33d New York Volunteers, may be recorded with the proceedings of the General Court Martial which tried him :

GENERAL ORDERS,	}	HEADQUARTERS, ARMY OF THE POTOMAC,
No. 39.		Washington, February 4, 1862.

I...Before a General Court Martial, of which Brigadier General J. M. BRANNAN, United States Volunteer service, is President, convened at the Camp of Smith's Division, by virtue of "Special Orders," No. 192, from these Headquarters, of December 19, 1861, was arraigned and tried Captain *John R. Cutler*, 33d New York Volunteers, on the following charges and specifications :

#### CHARGE I.

*"Violation of the 15th Article of War."*

*Specification*—"In this ; that the said Captain *John R. Cutler*, of the 33d Regiment New York State Volunteers, did, at Camp Granger, District of Columbia, on or about the 1st of August, 1861, sign a false muster roll in which six of the men therein enumerated as present had previously deserted."

#### CHARGE II.

*"Violation of the 14th Article of War."*

*Specification*—"In this ; that he, the said Captain *John R. Cutler*, of the 33d Regiment New York State Volunteers, did receive pay from Paymaster Banister for six men, they having previously deserted. This at Camp Lyon, Maryland, on or about the 12th day of August, 1861."

## CHARGE III.

*"Violation of the 18th Article of War."*

*Specification*—"In this ; that the said Captain *John R. Cutler*, of the 33d Regiment New York State Volunteers, did, at Camp Griffin, Virginia, on or about the 12th of December, 1861, cause to be signed a false return relating to the desertions, discharges, deaths, &c., in his Company, when called upon for said return by order of the Colonel of his Regiment."

## CHARGE IV.

*"Violation of the 14th Article of War."*

*Specification*—"In this ; that the said Captain *John R. Cutler*, 33d New York Volunteers, did, on or about the 7th day of July, 1861, at Elmira, in the State of New York, procure James Hilbreth, of his Company, to personate Private Salsbury, (a deserter from his Company,) and to draw the pay of the said Salsbury, which pay the said Captain *Cutler* applied to his own use, giving the said Private Hilbreth fifty cents for his services."

## CHARGE V.

*"Violation of the 31st Article of War."*

*Specification*—"In this ; that the said Captain *John R. Cutler* did purchase and cause to be sold to his Company a quantity of boots, gloves, and various other articles, at exorbitant prices, for his own private personal benefit. This at Camp Griffin, on or about the 1st day of November, 1861."

## CHARGE VI.

*"Disobedience of orders."*

*Specification*—"In this ; that the said Captain *John R. Cutler*, of 33d Regiment New York State Volunteers, did, on or about the 15th day of September, 1861, take from a house on Mackell Hill, two blankets and one lady's plaid cloak. This in violation of General Orders."

To all of which charges and specifications the accused pleaded  
 "Not Guilty."

After mature deliberation on the testimony adduced, the  
 Court finds the prisoner as follows :

Of the *Specification* to the 1st Charge, "Not Guilty."

Of the 1st CHARGE, "Not Guilty."

Of the *Specification* of the 2d Charge, "Guilty."

Of the 2d CHARGE, "Guilty."

Of the *Specification* of the 3d Charge, "Not Guilty."

Of the 3d CHARGE, "Not Guilty."

Of the *Specification* of the 4th Charge, "Guilty."

Of the 4th CHARGE, "Guilty."

Of the *Specification* of the 5th Charge, "Not Guilty."

Of the 5th CHARGE, "Not Guilty."

Of the *Specification* of the 6th Charge, "Not Guilty."

Of the 6th CHARGE, "Not Guilty."

And does therefore sentence him, the said Captain *John R. Cutler*, 33d Regiment New York Volunteers, "*To be cashiered.*"

II.—The Major General Commanding, upon reviewing the proceedings in this case, is led to remark upon the very objectionable mode of framing charges which has been adopted by the reporting officer. Instead of stating the offence of which the accused is supposed to be guilty, the charge in three instances is "Violation of Article of War." In this manner Captain Cutler is charged with violating the 14th, the 15th, the 18th, and the 31st Articles of War. He is acquitted of violating the 15th, the 18th, and the 31st, but found guilty of violating the 14th Article on two occasions. The specifications being, 1st, that he received pay for six men who had deserted, and, 2d, that he procured Private James Hildreth to personate a deserter from his (Captain Cutler's) Company and draw pay in his name, which pay, it is alleged, Captain Cutler and Hildreth divided among themselves in very unequal proportions. The evidence is very plain that Captain Cutler was guilty of the offences charged in these specifications; but, on turning to the 14th

Article of War, it will be seen that the offence furnished by that section is the signing of a false certificate relating to the absence of either officer or private soldier, or relative to his or their pay, and although the infamous conduct described in the specifications quoted is "unbecoming an officer and a gentleman," and therefore punished by the 83d Article of War, it cannot be said to be a violation of Article 14th, which refers to an entirely different matter.

Most of the Articles of War simply ascertain the punishment of the military crime described in them. They declare, for example, that whoever "shall make a false muster of man or horse," (Article 15,) "shall be cashiered." Some few of them do in terms forbid the doing of the act against which the punishment is denounced, but this is not the case generally; and, in every instance, the emphatic part of the article is the declaration that the person so offending *shall be punished* in the manner and degree designated by the statute. It is clear, then, that it is improper to describe a military offence as the *violation of an Article of War*. An Article of War is more distinctly *violated* when a Court fails to annex the statutory penalty to a military crime, than by the crime itself. Instead, therefore, of charging upon an Officer or a Private, a violation of any Article of War, the reporting officer should name the offence, which is punished by the article, and proceed to specify, with the addition of time and place, the circumstances in which the offence consists. A person can only be guilty of a charge by being guilty of the matter stated in the specifications of the charge. There must be such a correspondence between the two, that to have been guilty of the one draws with it the necessary consequence that the accused is guilty of the other. Whenever these conditions do not obtain, the record is defective. In the present case, the dishonoring acts of which Captain Cutler is found guilty, are not punishable by the 14th Article of War, and their commission cannot, by any indulgence towards an inaccurate mode of framing charges, be considered a violation of that article. But, it does not follow, that the 33d Regiment New York Volunteers,



is to be longer disabled by continuing to number among its Captains such delinquents as John R. Cutler. His guilt was demonstrated by the trial; no interpretation can be given to the testimony by which this conclusion can be avoided; indeed, the most convincing evidence—it may be almost called an admission—of the guilt of the accused is to be found in his attempt to show *that the general sentiment of the officers of his regiment justified them in procuring the personation of deserters* absent from the regiment before the paymaster, the drawing of pay in their name, and the appropriation of this pay to the use of the officer continuing and executing the scandalous roguery! The effrontery of such an attempt is almost incredible, but unhappily the proof of it is to be found in this record.

The sentence of the General Court Martial in the foregoing case of Captain John R. Cutler, 33d New York Volunteers, cannot, therefore, be carried into effect; but justice to the military service requires that this officer should no longer remain upon the rolls of the Army. It is therefore respectfully recommended to the President of the United States that this officer be stricken from the rolls.

III.—The General Court Martial of which Brigadier General J. M. BRANNAN is President, is dissolved.

II.—In compliance with the recommendation in the foregoing order, the PRESIDENT directs that the name of Captain *John R. Cutler*, 33d New York Volunteers, be stricken from the rolls of the Army.

BY COMMAND OF MAJOR GENERAL McCLELLAN:

L. THOMAS,  
*Adjutant General.*

OFFICIAL:

*Assistant Adjutant General.*